Supreme Court, U.S.
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No. 01-323

IN THE

Supreme Court of the United States

ELIZABETH WINKER
Petitioner

v.

BOEING COMPANY, THE
AND
MCDONNELL DOUGLAS CORPORATION

On Petition For Writ Of Certiorari
To The Eight Circuit Court of Appeals

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Elizabeth Winker
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STATEMENT

Ms. Winker hired Counsel Mr. Levine on February 24, 1997. He was paid $20,000 and Ms. Winker received no results. Mr. Levine and I had an agreement for Legal Services / Review Claims regarding Americans with Disabilities Act and wrongful discharge and pursue settlement. The Lawyer was hired through the Bar Association referral service. This date is significant because the charge questionnaire was received by and stamped received February 26, 1997 by the EEOC. Ms. Winker's Counsel was employed to defend Ms. Winker. Instead he allowed many errors and misrepresented here and abused her and the rules of the court. Petitioner is pro se. District Court Judge Rodney. W. Sippel, under his analysis of review he states in his Memorandum and order "Burden of proof. No genuine issue of material fact, summary judgement should be granted. Must introduce affidavits, depositions, admissions, specific facts, and material fact for trial. Further, a plaintiff facing a motion for Summary judgement must designate specific fact showing a genuine issue of material fact on each essential element of this claim".

Ms. Winker felt her Counsel was delinquent, negligent and abusive. Ms. Winker's Counsel granted lack of evidence. There was no evidence of Ms. Winker's condition getting worse. Petitioner's Doctors: Psychiatrist, Psychologist and Primary Care Physician, which Petitioner does not see anymore, did not come forth with depositions or affidavits for facts for trial.

When Petitioner was terminated the Union Business Representative, Stephen Bruske introduced these statement and Facts: During my investigation, it became clear that Ms. Winker could have been and was a productive employee if left alone and not harassed. Witnesses attesting to this statement: 7 Employees.

Per Mr. Bruske:
Many more individuals wanted to give testimony on her behalf. This point was well taken and thus documented.

During the investigation, it became apparent that the apathetic behavior of Supervisor Loren Hodge towards Ms. Winker was appalling. Not only should MDC condemn this type of action, but let the record show, the Union strongly protests any and all types of this action by Supervision towards our union members. Had the Union been made aware of this at the time, a Grievance would definitely have been filed on behalf of Ms. Winker. During the 1st Step Hearing, Mr. Hodge denied making any derogatory statements about Ms. Winker, but the Union has contradictory testimony, that he did in fact refer to Ms. Winker as a nut.

In conclusion, the Union's position is that Ms. Winker should be reinstated, with no loss of time or benefits and she should be treated as any other employee with obvious disabilities.

Mr. Bruske retired before the arbitration was cancelled on February 11, 1997. The new Business Representative cancelled arbitration on February 11, 1997. The EEOC stamped received February 26, 1997, the charge questionnaire that was sent to Ms. Winker and filled out. On these 11 pages to the EEOC, it states that the company and the Union discriminated against her. Ms. Winker claimed discrimination and did not claim or allege harassment on the bases of sex. The questionnaire also asked if assistance was sought, Name of Source Assistance Mike Barrett, Mr. Barrett's Affidavit dated October 03, 2001 states:
Ms. Elizabeth Winker called my office regarding her discharge form McDonnell Douglas Corporation. I

advised Ms. Winker that I did not handle employment law cases, but that she should contact the EEOC (equal employment opportunity commission) to file a report against her former employer. It was my impression that Ms. Winker was unaware of what the EEOC was at the time of our telephone conversation on or about February 20, 1997.

Clearly Petitioner's case had genuine issues, facts, affidavits and depositions.

Affidavit of Richard J. Wickham, a secretary for McDonnell Douglas executed on November 11, 1997, states (#7) McDonnell Douglas Corporation is capable of satisfying any judgement against it for the purported discrimination alleged in Elizabeth Winker's lawsuit.

Sandra Parker executed two Affidavits December 1997 and November 1999 with conflicting information. Her position at McDonnell Douglas was Litigation Administrator.

Raymond D. Farrari executed two Affidavits November 1998 and November 1999 with conflicting information. His position was controller of Military Aircraft and Missile Systems (MAMS).

Raymond D. Farrari executed a thirty-two-page deposition. Page 18 question presented to him: "So the tools are owned by the United States government?" Mr. Farrari answered "Yes, they are."

Loren Hodge, who terminated Ms. Winker wrongfully, executed a deposition on October 22, 1999 proving his leadership, conflicts with his training.

Paul Homan, who was laid off, executed an affidavit. His position was co-worker Union employee. He states (#11)

that the existence of Ms. Winker's mental illness was known throughout the building.
"I recall Ms. Winker's supervisor, Loren Hodge having knowledge of this fact."
"I recall witnessing on a number of occasions, both before and after Ms. Winker was terminated, Mr. Hodge proclaimed to fellow supervisors and co-workers that Ms. Winker was "a nut" and "nuts".
"I am also aware that the company attendance policy was not uniformly applied and that supervisors exercised broad discretion in its application: For Example, I heard a former co-worker Tony Smaltz, proclaim that he had missed sixty-four (64) days without receiving discipline. I heard him boast that he set a record for the most absences without discipline."
Mr. Homan also states that Ms. Winker was able to perform her job at a very high level of competence. Homan states most of the tools had labels which stated "property of the U. S. Navy".

Petitioner has a sworn statement by her father, Ewald Winker, dated April 18, 2001. He states (#10) Scott Levine dismissed Boeing Co. as a party defendant May 11, 1998. Elizabeth did not concur with Mr. Levine's decision.

Deposition (39 pages) of the witness, who is now retired, Mary Lou Shed was on behalf of plaintiff and states she also, suffers from depression. She testified that the supervisor picked on Ms. Winker, He was aware of Petitioners mental illness. She states she missed work because of her illness and when she found out he was going to be her supervisor, they called him the "terminator" and to watch herself because he like to fire people. Ms. Shed states that Hodge rode Ms. Winker quite a bit. She also states that she herself had an attendance problem and it was overlooked. She testified that out at Boeing, attendance is based on a who-you-

know basis. Attendance is not a mechanical process. She knows people with many EIRS, up to five (5) in their folder, and supervisors exercise discipline at their own discretion. She also testifies tools were property of the US Navy and the Government owns the tools. She admits that the night before her deposition on Ms. Winker's behalf, the defendant called her on her phone before her testimony. Also, she states that she knows a lot of employees were really upset about Ms. Winker getting fired on a sick leave. She admits that she, herself, had enough absenteeism to get terminated. Because of her record, she was concerned that she was getting Loren Hodge, "the terminator" for a supervisor. She also states that she was probably lucky that she didn't get fired and had gotten written up three (3) times.

There is also testimony on behalf of Ms. Winker from Mrs. Linda Ferder in October 2001. Mrs. Ferder, who started employment in January 1975, was installed in the Union in May of 1975. She was a Shop Steward 1979-1984, plant chairman for Union Business Representative April 1991 through 1996. She ran for president of the Union in 1996 and lost by 23 votes. She then went back to the shop in 1997 and is presently working in factory as a sheet metal worker. She will testify she knows many workers who missed a lot of time but did not get fired. The Company attendance policy is not in accordance with the terms of a collective bargaining agreement (CBU). The Union never agreed to be part of the company no fault attendance policy and that it is an unfair practice (dispaired attendance policy) it depends who you are. The company did not follow their own policy. They discriminated. For example, Bob Schafer told witnesses that a supervisor wrote up Rich Healy for attendance. At the same time, in the same department, he never wrote up Lois Caffle who was Mrs. Ferder states was late to work 85% of the year for three (3) years. She did not clock in, instead the supervisor wrote her time in and witnesses

complained. There is a No-fault attendance policy that the Union does not agree with. Mrs. Ferder, as an arbitrator, reinstated workers that should never have been terminated. Judge Sippel states Ms. Winker was terminated in July 1994. That is false. Ms. Winker was terminated October 11, 1993 through July 11, 1994. Ms. Winker was hospitalized for mental illness October 11, 1993. She could not have taken sick leaves from October 1993 to December 1993 because she had been terminated during that time.

Mrs. Ferder testifies that Ms. Winker was written out of context of the Company no-fault attendance policy for excused and unexcused absences. She actually received three (3) written warnings (EIRs) before her first oral warning (Record of Unsatisfactory Performance or "RUP").

Mrs. Ferder testifies that Ms. Winker was not on Social Security prior to her first termination October 11, 1993. Ms. Winker went to the Social Security on October 22, 1993 after first termination and started receiving Social Security benefits before she was reinstated back to her job on July 11, 1994. She received a seven-month trial work period under Title 7 Social Security.

Mrs. Ferder and Company labor representative agreed to reinstate Ms. Winker on July 11, 1994, due to extenuating circumstances due to her mental illness. At the time of Ms. Winker's termination Mrs. Ferder's name was Linda Golleher and it is now Linda Ferder. Elizabeth Winker did not miss 238 days her last year of employment. Mrs. Ferder admits that if Ms. Winker's arbitration would have not cancelled and if due process had occurred she would have her job back.

As an employee of McDonnell Douglas, Elizabeth worked on planes that were owned by the U.S.

government (F18 Blue Angels). Ms. Winker did wing repair. Her previous supervisor gave favorable appraisals of her work. "Employee does very good on work quality. Is outstanding in her work output, work habits, work interest, resourcefulness and gets along well with everyone. Employee is truly an asset to her department".

Ms. Winker is not seeing previous doctors. Her psychologist, Dr. Patricia Shaw, Ph.D. is being investigated for Medicare fraud, overcharging Ms. Winker. There is a pamphlet that shows Dr. Shaw supports MAPS. MAPS supports financially and otherwise, the use of psychedelics and marijuana through science. Dr. Shaw leaned toward the defendant and in no way supported Ms. Winker to regain her employment. Previous psychiatrist, Dr. Ahmad Ardekani responded the same way.

Ms. Winker's psychiatrist, Dr. Winston Kitchen, 950 Francis Pl Suite 204, St. Louis, MO 63105, states in a letter for the Court:
"I am the treating psychiatrist for Ms. Winker. Her diagnosis is bipolar disorder. She has responded fairly well to mediation treatment and regular office visits. I do believe she is competent to participate in courtroom proceedings. However, she may need special accommodations such as very careful listening to her arguments so that she is not misunderstood. In addition, court rulings or decisions should be very carefully explained to her so that she does not misunderstand them."

CONCLUSION

Defendants admit to the Eighth circuit EDSL that by company rules Ms. Winker only technically missed 21 days. They admit this on their opposition of Ms. Winker

wanting to supplement to the record. Actually out of those 21 days Ms. Winker had six (6) sick days and ten (10) vacation days. This means that the petitioner missed only 5 days according to the no-fault attendance policy that the union had no part of.

The Defendants were careless in their briefs to the Eighth Circuit. The Eighth Circuit did not reject Ms. Winker.

By Missouri Corporation law, McDonnell Douglas merged with Boeing and took on all obligations from McDonnell Douglas at time of merger.

Entered here is an order under rule 27B(a) from the United States Court of appeals for the Eighth Circuit form the clerk Michael Gans on November 21, 2000. It states: The motion of Scott D. Levine for leave to withdraw as counsel of record for Elizabeth Winker is granted. Ms. Winker's motion for permission to supplement the record will be taken with the case for consideration by the panel to which the case is submitted for disposition on the merits. The clerk is directed to transmit a copy of Ms. Winker's motion to Appellee's attorney of record.

Respectfully submitted,
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